

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

WILLIAM TACKETT,	:	NO. 1:13-CV-00335
	:	
Petitioner,	:	
	:	
vs.	:	OPINION AND ORDER
	:	
WARDEN, SOUTHERN OHIO	:	
CORRECTIONAL FACILITY,	:	
	:	
Respondent.	:	

This matter is before the Court on the Magistrate Judge's Report and Recommendation (doc. 8), and Petitioner's Objection (doc. 9). For the reasons indicated herein, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation and TRANSFERS this matter to the Sixth Circuit Court of Appeals for a determination as to whether the district court may review it.

Petitioner brings a pro se Petition for a writ of habeas corpus (doc. 1), challenging his conviction in Scioto County, Ohio, on sixty-six counts of pandering sexually oriented matter involving a minor. Respondent moved to dismiss or transfer the Petition as successive (doc. 6).

The Magistrate Judge issued her Report and Recommendation that Respondent's motion should be granted and the Petition should be transferred to the Sixth Circuit as successive under 28 U.S.C. § 2244(b) (doc. 8). Having reviewed this matter, the Court finds no question that the Petition is successive, and therefore is not properly before this Court. Petitioner's Objection in no way

addresses whether his Petition is successive. Petitioner has not established any new rule of constitutional law made retroactive to his case on collateral review or that the factual predicate of his claim was not previously discoverable through the exercise of due diligence.

Petitioner has neither argued nor otherwise demonstrated that the instant Petition is not successive within the meaning of 28 U.S.C. § 2244(b), nor has Petitioner made a prima facie showing under 28 U.S.C. § 2244(b)(2) that the conditions allowing for review of new claims have been met. The Court therefore concludes that Magistrate Judge is correct in her assessment that the instant Petition is successive within the meaning of 28 U.S.C. § 2244(b) and that, therefore, this Court lacks jurisdiction to consider Petitioner's claims for relief absent authorization by the Sixth Circuit.

Accordingly, the Court ADOPTS and AFFIRMS the Magistrate Judge's Report and Recommendation (doc. 8), and GRANTS Respondent's motion to dismiss or transfer (doc. 6), to the extent that it TRANSFERS this matter pursuant to 28 U.S.C. § 1631 to the United States Court of Appeals for the Sixth Circuit for consideration as to whether the district court may review the Petition in accordance with 28 U.S.C. § 2244(b).

SO ORDERED.

Dated: February 24, 2014

s/S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge